

STATE OF MICHIGAN
COURT OF APPEALS

JACK LEONARD DARMER,
Plaintiff-Appellee,

UNPUBLISHED
July 7, 2005

v

CITIZENS INS CO,
Defendant-Appellant.

No. 260479
Ingham Circuit Court
LC No. 03-001881-NI

Before: Cooper, P.J., and Fort Hood and Gribbs*, JJ.

MEMORANDUM.

Defendant appeals by right a denial of its motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse in part and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, an employee of General Motors, was involved in a disabling automobile accident on October 11, 2002. He was entitled to no-fault work loss benefits under a coordinated policy issued by defendant. However, he was also entitled to receive compensation under General Motors' self-funded long-term disability (LTD) plan.

At issue in this case is whether the disability benefits plaintiff received are subject to set-off pursuant to MCL 500.3109a, which provides:

An insurer providing personal protection insurance benefits shall offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. The deductibles and exclusions required to be offered by this section shall be subject to prior approval by the commissioner and shall apply only to benefits payable to the person named in the policy, the spouse of the insured and any relative of either domiciled in the same household.

Defendant paid plaintiff no-fault work loss benefits, but deducted amounts equivalent to his disability benefits. Plaintiff filed suit to challenge the coordination of benefits. The trial court found that defendant was not entitled to set-off plaintiff's disability benefits pursuant to case law

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

that included our decision in *Jarrad v Integon Natl Ins Co*, unpublished opinion of the Court of Appeals, issued January 27, 2004 (Docket No. 245068).¹

In *Jarrad v Integon Natl Ins Co*, ___ Mich ___; ___ NW2d ___ (2005), our Supreme Court held that an employer’s self-funded LTD plan² may be coordinated with no-fault wage loss benefits as “other health and accident coverage” under MCL 500.3109a. (Slip op at 23-24). In his supplemental brief, plaintiff concedes that *Jarrad, supra*, is controlling for the purpose of determining that no-fault benefits may, in general, be coordinated with his LTD plan, and that the trial court erroneously determined that set-off was generally unavailable. However, plaintiff maintains that *Jarrad, supra*, does not resolve the issue of whether coordination is required here. Instead, pointing to the language of MCL 500.3109a above, he argues that a question of fact exists as to whether an appropriately reduced premium was provided in light of his employer’s self-funded long-term disability plan and whether the reduction was “reasonably related” to his being entitled to such benefits. Plaintiff did not argue this claim below, nor was it decided by the trial court. Therefore, we reverse the trial court’s decision as it pertains to plaintiff’s LTD benefits, and remand for consideration of plaintiff’s claim.

Reversed in part and remanded. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs

¹ The trial court additionally found that defendant was not entitled to set-off plaintiff’s medical pension and his Social Security Disability benefits. Defendant does not challenge this finding.

² *Jarrad* involved an employee of the Department of Corrections who was enrolled in a state self-funded LTD plan.